

#### **401 KAR 5:006. Wastewater planning requirements for regional planning agencies.**

RELATES TO: KRS Chapters 67, 67A, 74, 76, 96, 108, 220, 224.10-100, 224.70-100, 224.70-110, 424, 33 U.S.C. 1251-1387

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110, 40 C.F.R. 130, 33 U.S.C. 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Energy and Environment Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization within each area to develop a wastewater treatment management plan applicable to all wastewater generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

Section 1. Applicability. (1) A governmental entity, such as a city, county, or other public body created by KRS 67, 67A, 74, 76, 96, 108, or 220, may apply for designation as a regional planning agency. An applicant for designation as a regional planning agency shall submit a regional facility plan to the cabinet.

(2) The cabinet shall designate a regional planning agency in accordance with 33 U.S.C. 1288(a)(2) and (3).

(3) The cabinet shall de-designate a regional planning agency if:

- (a) The regional planning agency requests de-designation;
- (b) The regional planning agency fails to meet its planning obligations as specified in a grant agreement, contract, or memorandum of understanding; or
- (c) The regional planning agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundary.

(4) If a regional planning agency is de-designated, the cabinet shall assume responsibility for continued water quality planning and oversight of implementation of planning activities within the regional planning area.

(5) The cabinet shall not designate an entity as a regional planning agency if that entity does not have authority to meet the requirements established in 33 U.S.C. 1288(c)(2)(A) through (I).

Section 2. Requirement to Submit a Regional Facility Plan. (1) An applicant for designation as a new regional planning agency shall submit a regional facility plan to the cabinet.

(2) An existing regional planning agency shall submit a regional facility plan if:

- (a) A new wastewater treatment facility is proposed for construction within the planning area;
- (b) An existing regional planning agency proposes to expand the average daily design capacity of an existing wastewater treatment facility by more than thirty (30) percent; or
- (c) The equivalent population served by an existing wastewater collection system or a system with a Kentucky Inter-System Operating Permit is proposed for expansion by more than thirty (30) percent of the population served in the previously approved regional facility plan.

(3) A regional planning agency shall request a pre-planning meeting with the cabinet before submitting a regional facility plan.

(4) Two (2) paper copies and one (1) electronic copy of the regional facility plan shall be submitted to the cabinet. One (1) copy shall be certified in a manner that meets the requirements established in 201 KAR 18:104.

Section 3. Contents of a Regional Facility Plan. (1) A regional facility plan shall include adequate information to allow for an environmental assessment of the projects proposed in the regional facility plan that are ready to begin construction within the first twenty-four (24) months of the planning period and to assure that a cost-effective and environmentally sound means of achieving the established water quality goals can be implemented.

(2) A regional facility plan shall be consistent with the Regional Facility Plan Guidance and shall include:

- (a) A regional facility plan summary;
- (b) A statement of the purpose of and need for the regional facility plan, including documentation of existing water quality or public health problems related to wastewater in the planning area;
- (c) Physical characteristics of the planning area;
- (d) A description of the socioeconomic characteristics of the planning area;
- (e) A description of the existing environment in the planning area;
- (f) A description of the existing wastewater collection and treatment facilities in the planning area;
- (g) A forecast of flows and waste loads for the planning area;
- (h) A detailed evaluation of alternatives, along with a twenty (20) year present worth cost analysis for each alternative. All wastewater management alternatives considered, including no action, and the basis for the engineering judgment for selection of the alternatives chosen for detailed evaluation, shall be included. Sufficient detail shall be provided to allow for a thorough cost analysis to be conducted. Nonmonetary effectiveness criteria shall be limited to implementability, environmental impact, engineering evaluation, public support, and regionalization. The alternatives shall reflect a comprehensive regional plan for the planning area and shall minimize the number of point source discharges. Intended sources of funding shall be listed along with estimated user fees;
- (i) Cross-cutter correspondence and mitigation;
- (j) An evaluation of the recommended regional facility plan; and
- (k) Documentation of public participation.

1. A copy of the advertisement for the public hearing required by Section 5 of this administrative regulation, a copy of the minutes of the public hearing, and written comments and responses shall be submitted as part of the regional facility plan.

2. If more than one (1) public hearing is held or if there are public meetings or public notices about the project, a copy of all documentation of these events shall be submitted as part of the regional facility plan.

3. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.

(3) The items required in subsection(2)(f) through (h) of this section shall be prepared by, or under the direct supervision of, a professional engineer licensed in Kentucky.

Section 4. Requirement to Submit an Asset Inventory Report. (1) An asset inventory report shall be submitted to the cabinet if:

- (a) It has been ten (10) years since the regional planning agency submitted a regional facility plan or asset inventory report; and
- (b) Section 2(2) of this administrative regulation does not require the regional planning agency to submit a regional facility plan.

(2) The regional planning agency shall submit the following information on the Asset Inventory Report Form:

- (a) Wastewater facility data;
- (b) Revenue and expenses;
- (c) Asset inventory
- (d) Project prioritization;
- (e) Funding plan;
- (f) Copies of supporting documentation; and
- (g) Certification statement from a designated official.

(3) The cabinet shall issue to the regional planning agency an assessment report that provides recommendations related to facility planning, operation, and management that ensure continuing compliance and protection of surface water and groundwater.

(4) The cabinet shall provide public notice of its assessment of the Asset Inventory Report on its Web site for thirty (30) days.

(5) The public shall have an opportunity to comment on the cabinet's assessment of the asset inventory report and the period for comment shall remain open for thirty (30) days from the date of the first publication of the report.

(6)(a) If it has been ten (10) years or more since the approval of a regional planning agency's regional facility plan, the regional planning agency shall submit an asset inventory report to the cabinet by July 1, 2012.

(b) A subsequent asset inventory report shall be due to the cabinet ten (10) years from the approval date of the regional facility plan or asset inventory report, whichever is most recent.

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to final agency action on the regional facility plan, the regional planning agency shall publish notice of its draft plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing shall be provided pursuant to KRS Chapter 424.

(2) A public notice issued pursuant to this administrative regulation shall contain the following information:

- (a) The name and address of the regional planning agency that is proposing the plan;
- (b) A brief description of the contents of the draft plan and the area to be served;
- (c) The name, address, and telephone number of persons from whom interested persons may obtain further information and a copy of the draft regional facility plan;
- (d) A brief description of the public's right to comment on the draft regional facility plan and the procedures for commenting;
- (e) The date of previous public notices relating to the draft regional facility plan;
- (f) The date, time, and place of the public hearing on the draft plan; and
- (g) A brief description of the nature and purpose of the hearing.

(3) The planning agency shall provide a copy of the public notice and the draft plan to the cabinet for publication on its Web site at least thirty (30) days prior to the public hearing.

(4) The public shall have an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. The regional planning agency may extend the public comment period, on request, if it believes additional public input is necessary.

(5) A person may submit written or oral comments and data to the regional planning agency concerning the draft regional facility plan. In the interest of time and efficiency, limits may be set up on the time allowed for oral statements and the submission of statements in writing may be required.

(6) All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Regional Facility Plan Review. (1) The cabinet shall prepare an environmental assessment report summarizing the regional facility plan.

(a) The cabinet shall submit the environmental assessment report to the State Clearinghouse for review and comments to identify potentially adverse impacts resulting from the proposed projects that are ready to begin construction within the first twenty-four (24) months of the planning period.

(b) The cabinet shall provide public notice of the environmental assessment report on its Web site for thirty (30) days.

(c) The public shall have an opportunity to comment on the environmental assessment report, and the period of comment shall remain open for thirty (30) days from the date of the first publication of the report.

(d) The cabinet may identify measures in the environmental assessment report to avoid, minimize, or reduce potentially adverse environmental impacts.

(2) The cabinet shall issue a determination to approve or deny a regional facility plan within 120 calendar days of receipt of a complete regional facility plan.

(3) If the regional facility plan is submitted consistent with the requirements of this administrative regulation and addresses water quality or public health problems related to wastewater, the cabinet shall approve the regional facility plan.

(4) KPDES and facility construction permit decisions shall be made in accordance with approved regional facility plans, as established in 40 C.F.R. 130.12(a) and (b).

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Regional Facility Plan Guidance", February 2011; and

(b) "Asset Inventory Report Form", February 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>. (23 Ky.R. 1814; Am. 2780; eff. 5-14-1997; TAm eff. 8-9-2007; 37 Ky.R. 1757; 2434; eff. 6-3-11; TAm eff. 7-8-2016.)